

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ASSEM HOSSEIN,

Plaintiff,

v.

SHERIFF'S POLICE DEPARTMENT, et
al.,

Defendants.

No. 2:23-cv-2002 KJN P

ORDER

Plaintiff is a county jail inmate, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These

1 payments will be forwarded by the appropriate agency to the Clerk of the Court each time the
 2 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
 3 § 1915(b)(2).

4 As discussed below, plaintiff's complaint is dismissed with leave to amend.

5 Screening Standards

6 The court is required to screen complaints brought by prisoners seeking relief against a
 7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 8 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
 9 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
 10 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 13 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
 14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 17 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
 18 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
 19 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
 20 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
 22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
 23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
 24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 25 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
 26 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
 27 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
 28 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the

defendant fair notice of what the . . . claim is and the grounds upon which it rests.’’ Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

The Civil Rights Act

To prevail on a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a federal constitutional or statutory right; and (2) that the violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the facts establish the defendant’s personal involvement in the constitutional deprivation or a causal connection between the defendant’s wrongful conduct and the alleged constitutional deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable for the unconstitutional conduct of his or her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). The requisite causal connection between a supervisor’s wrongful conduct and the violation of the prisoner’s constitutional rights can be established in a number of ways, including by demonstrating that a supervisor’s own culpable action or inaction in the training, supervision, or control of his subordinates was a cause of plaintiff’s injury. Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011).

Discussion

First Claim

Plaintiff’s allegations are unclear, but he claims he was attacked from behind. To the extent plaintiff alleges that a particular defendant used excessive force, plaintiff is advised that the following standards govern such claims.

The Fourteenth Amendment’s Due Process Clause applies to the use of excessive force against pretrial detainees that amounts to punishment. Kingsley v. Hendrickson, 576 U.S. 389,

397 (2015); Gibson v. County of Washoe, 290 F.3d 1175, 1197 (9th Cir. 2002). Force is excessive if the officers' use of force was "objectively unreasonable" in light of the facts and circumstances confronting them, without regard to their mental state. Kingsley, 576 U.S. at 396; see also Graham v. Connor, 490 U.S. 386, 397 (1989) (applying an objectively unreasonable standard to a Fourth Amendment excessive force claim arising during an investigatory stop). In determining whether the use of force was reasonable, the Court should consider factors including, but not limited to

the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

Kingsley, 576 U.S. at 397. Because officers are often forced to make split-second decisions in rapidly evolving situations, the reasonableness of a particular use of force must be made "from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." Id. at 2473-74 (citing Graham, 490 U.S. at 396). Further, "[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Constitution. Graham, 490 U.S. at 396 (citation omitted).

Plaintiff's complaint does not address all of the factors set forth above and does not identify each defendant and what such defendant did or did not do that allegedly violated plaintiff's rights. Plaintiff is granted leave to amend to address the above factors and identify the culpable individuals.

Second Claim

Plaintiff sues the District Attorney of Sacramento County. Plaintiff's claims against the prosecutor are unclear. However, actions allegedly taken during the prosecution of plaintiff are barred by prosecutorial immunity. A prosecutor is protected by absolute immunity from liability in a civil rights suit for damages "when performing the traditional functions of an advocate." Kalina v. Fletcher, 522 U.S. 118, 131 (1997) (citing Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993); Imbler v. Pachtman, 424 U.S. 409, 430 (1976)). A prosecutor's advocacy functions are those activities that are "intimately associated with the judicial phase of the criminal process"

1 Imbler, 424 U.S. at 430. Such activities include, among other things, “initiating a prosecution and
 2 [] presenting the State’s case” at trial, even if such activities involve “the knowing use of false
 3 testimony at trial, the suppression of exculpatory evidence, and malicious prosecution.” Imbler,
 4 424 U.S. at 431. Typical activities protected by prosecutorial immunity include “acts undertaken
 5 by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur
 6 in the course of [the prosecutor’s] role as an advocate for the State.” Buckley, 509 U.S. at 273.
 7 Defendant district attorney is entitled to prosecutorial immunity as to plaintiff’s claims alleging
 8 misconduct by defendant district attorney during the judicial phase of the criminal proceedings
 9 against plaintiff. Plaintiff should not include the district attorney in any amended complaint.

10 Third Claim: Sacramento County Superior Court

11 Sacramento County Superior Court is a state agency and is thus immune from suit under
 12 the Eleventh Amendment. See Simmons v. Sacramento County Superior Court, 318 F.3d 1156,
 13 1161 (9th Cir. 2003) (Suit against state superior court is barred by the Eleventh Amendment);
 14 Greater Los Angeles Council on Deafness, Inc. v. Zolin, 812 F.2d 1103, 1110 & n.10 (9th Cir.
 15 1987) superseded by statute on other grounds as stated in Buffin v. California, 23 F.4th 951, 963
 16 (9th Cir. 2022), (“[A] suit against the Superior Court is a suit against the State, barred by the
 17 eleventh amendment.”). Accordingly, plaintiff should not name the Sacramento County Superior
 18 Court as a defendant in any amended complaint.

19 Third Claim: State Court Judges

20 State judges are absolutely immune from civil liability for damages for acts performed in
 21 their judicial capacity. See Pierson v. Ray, 386 U.S. 547, 553-55 (1967) (applying judicial
 22 immunity to actions under 42 U.S.C. § 1983); See Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)
 23 (noting that judicial immunity is an immunity from suit). Plaintiff shall omit any claims against
 24 state court judges in any amended complaint.

25 Relief

26 Plaintiff claims he does not want to go to superior court for jury trial but wants to go
 27 home. To the extent plaintiff seeks his immediate release from custody, the court cannot award
 28 this relief in a civil rights action. Plaintiff may request release from custody in a habeas corpus

petition pursuant to 28 U.S.C. § 2254. Skinner v. Switzer, 562 U.S. 521, 533-34 (2011) (habeas is the “exclusive remedy” for the prisoner who seeks “immediate or speedier release” from confinement).

Leave to Amend

The court finds the allegations in plaintiff’s first claim are so vague and conclusory that it is unable to determine whether the current action is frivolous or fails to state a claim for relief. The court determines that the complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support plaintiff’s claim. Id. Because plaintiff failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions about which he complains resulted in a deprivation of plaintiff’s constitutional rights. See e.g., West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This requirement exists because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint supersedes the original, the latter being treated thereafter as non-existent.’” (internal citation

omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

Finally, plaintiff should not cross out portions of the complaint form. Rather, plaintiff must specifically identify each individual plaintiff is naming as a defendant herein (ECF No. 1 at 2.) Plaintiff must set forth the injury he contends he sustained as a result of the constitutional violation, and he must identify the relief sought. As noted above, plaintiff cannot obtain release from prison by way of a civil rights complaint under 42 U.S.C. § 1983.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Sacramento County Sheriff filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Amendment and submit the following documents to the court:

a. The completed Notice of Amendment; and

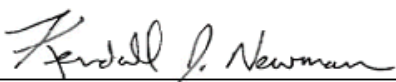
b. An original of the Amended Complaint.

Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must be filed on the court's form, bear the docket number assigned to this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order may result in the dismissal of this action.

5. The Clerk of the Court shall send plaintiff the form for filing a civil rights complaint by a prisoner.

Dated: November 28, 2023

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 ASSEM HOSSEIN,

No. 2:23-cv-2002 KJN P

11 Plaintiff,

12 v.

NOTICE OF AMENDMENT

13 SHERIFF'S POLICE DEPARTMENT, et
14 al.,

15 Defendants.

16
17 Plaintiff submits the following document in compliance with the court's order
18 filed _____.

19 Amended Complaint

20 DATED: _____

21 Plaintiff _____
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